

REMARKS/ARGUMENTS

Claims 1-25 were pending in this application. Claims 1, 11, and 23 have been amended. No claims have been added. Claims 5 and 15 have been cancelled. Hence, claims 1-4, 6-14, and 16-25 are pending. Reconsideration of the subject application as amended is respectfully requested.

Claims 1 and 5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the cited portions of U.S. Patent No. 5,805,587 to Norris, *et al.* (hereinafter "Norris").

Claims 1-4, 6-8, 10-14, 16-18, 20 and 22-25 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the cited portions of U.S. Patent No. 6,259,692 to Shtivelman, *et al.* (hereinafter "Shtivelman").

Claims 9, 15 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shtivelman, in view of the cited portions of U.S. Patent No. 6,353,611 to Norris.

Claims 1, 11, and 23 have been amended to more clearly recite the Applicants' claimed invention. Claims 5 and 15 have been cancelled.

Claim Rejections Under 35 U.S.C. § 102

Claims 1, 11 and 23 have been amended to include limitations previously rejected under 35 U.S.C. § 103 by combining the teachings of Norris and Shtivelman. The office action, however, does not cite a reference in the prior art that provides the necessary motivation or suggestion to combine the teachings of Norris with those of Shtivelman to achieve the Applicant's claimed invention. The Applicants note that,

[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

(MPEP § 2143.01) However,

[t]he examiner may take official notice of facts outside the record which are capable of instant and unquestionable demonstration as being well-known in the

art. ... If justified, the examiner should not be obliged to spend time to produce documentary proof. If the knowledge is of such notorious character that official notice can be taken, it is sufficient so to state. ... If the applicant traverses such an assertion the examiner should cite a reference in support of his or her position.

When a rejection is based on facts within the personal knowledge of the examiner, the data should be stated as specifically as possible, and the facts **must be supported, when called for by the applicant, by an affidavit** from the examiner.

(MPEP § 2144.03, emphasis added, citing 37 CFR §1.104(d)(2)) Because no reference is cited that provides the teaching, suggestion, or motivation to combine the references, the Applicants assume the office action is relying on facts within the personal knowledge of the Examiner. The Applicants, therefore, respectfully traverse the rejection and request either an express showing of documentary proof, or an affidavit specifically stating the facts within the personal knowledge of the Examiner, as required by 37 CFR §1.104(d)(2).

The remaining claims depend from one of claims 1, 11, and 23, and are believed to be allowable for the reasons stated above. Claims 1, 11, and 23 are thus believed to be allowable.

Appl. No. 09/660,785

PATENT

Amdt. dated April 15, 2004

Reply to Final Office Action of December 17, 2003 and
Advisory Action of February 27, 2004

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Irvin E. Branch', written over a horizontal line.

Irvin E. Branch
Reg. No. 42,358

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 303-571-4000
Fax: 415-576-0300
IEB:arl
60166359 v1